

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NORTHWEST PIPE COMPANY,

3:09-CV-01126-PK

Plaintiff,

ORDER

v.

RLI INSURANCE COMPANY and
EMPLOYERS INSURANCE OF WAUSAU,

Defendants.

BROWN, Judge.

Magistrate Judge Paul Papak issued Findings and Recommendation (#171) on June 25, 2012, in which he recommends the Court deny the informal motion to strike by Plaintiff Northwest Pipe Company and deny the Motion (#148) for Partial Summary Judgment of Defendant RLI Insurance Company. RLI filed timely objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

RLI does not object to the findings of the Magistrate Judge. RLI, however, objects to the Magistrate Judge's conclusion on the ground that the Magistrate Judge failed to resolve RLI's Motion for Partial Summary Judgment in its entirety because he did not address RLI's contention that some portion of the cost of defense should be allocated to Plaintiff on the ground that Plaintiff's assent to an absolute pollution exclusion in Endorsement 8 to the Employers Insurance Company of Wausau insurance policy covering the period from July 8, 1985 to July 8, 1986, violated "Condition S" of RLI's policy of insurance with Plaintiff. Accordingly, RLI contends its liability for defense costs should be reduced by some unspecified amount due to Plaintiff's failure to maintain the Wausau policy "in full effect." The Court agrees this issue was not addressed in the Findings and Recommendation. The Court, therefore, refers this issue to the Magistrate Judge either (1) to explain the basis for choosing not to address this argument or (2) to address RLI's argument and, if necessary, to modify the Findings and Recommendation.

No objection to the rest of the Magistrate Judge's Findings and Recommendation were filed, and, therefore, this Court is relieved of its obligation to review the record *de novo*. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*). See also *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988). Having reviewed the legal principles *de novo*,

the Court does not find any error.

CONCLUSION

The Court **ADOPTS in part** the Findings and Recommendation (#175) as to the portion unrelated to the issue set out above. The Court **REFERS** to the Magistrate Judge RLI's contention that some portion of the cost of defense should be allocated to Plaintiff on the ground that Plaintiff's assent to an absolute pollution exclusion in Endorsement 8 to the Employers Insurance Company of Wausau insurance policy covering the period from July 8, 1985 to July 8, 1986, violated "Condition S" of RLI's policy of insurance. This issue is referred to the Magistrate Judge either (1) to explain the basis for choosing not to address this argument or (2) to address RLI's argument and, if necessary, to modify the Findings and Recommendation.

IT IS SO ORDERED.

DATED this 7th day of September, 2012.



ANNA J. BROWN
United States District Judge